In the Supreme Court

OF THE

United States

OCTOBER TERM, 1939

No. 129

GENERAL AMERICAN TANK CAR CORPORATION
(a corporation),
Petitioner,

vs.

EL DORADO TERMINAL COMPANY
(a corporation),
Respondent.

RESPONDENT'S PETITION FOR A REHEARING.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Respondent El Dorado Terminal Company, respectfully petitions for a rehearing of this cause upon the ground that the Court in its opinion not only failed to determine the issues presented in the record, but on remanding the case stayed the action of the Dis-

trict Court pending determination by the Interstate Commerce Commission of questions that were not involved in the present action, and the final decision of which by the Commission could not properly affect the ultimate decision of the case.

As stated in the Court's opinion, respondent brought this action in assumpsit to recover a sum alleged to be due it from the car corporation under the terms of a car leasing agreement. In its answer the car corporation admitted the execution and validity of the agreement, also the amount due thereunder to respondent, but pleaded that the payment of the said sum was prohibited by the provisions of the Elkins Act, and that such payment would subject the car corporation to prosecution for a violation of the provisions of said Act. The Circuit Court of Appeals held that the burden of proving this defense rested upon the car corporation, and that it had failed to make such proof. The Circuit Court of Appeals also held that the sums paid by the carriers to the car corporation as mileage allowances for the furnishing of the tank cars by respondent as the lessee thereof were those which were provided to be so paid in the rules constituting a part of the filed and published tariffs of the railroad carriers; that such payments by the carriers were contemplated by the Act and the published tariffs, and there was no inhibition or legal reason preventing the car corporation from paying over to respondent the moneys so collected, in accordance with the agreement under which respondent leased the said tank cars.

In its opinion this Court does not question the correctness of the decision of the Circuit Court of Appeals on either of these points. Responsive to the contention of the Interstate Commerce Commission as amicus curiae, this Court also holds that the lower courts had jurisdiction of the subject matter and of the parties. However, the cause was remanded "to be held pending the conclusion of an appropriate administrative proceeding. Thus any defenses the petitioner may have will be saved to it". The decision of this Court upholds the jurisdiction of the District Court and of necessity that of the Circuit Court of Appeals. It does not reverse the decision of the Circuit Court of Appeals that the evidence does not support the defense of the car corporation that payment of the car mileage received by that corporation in accordance with the car lease agreement was prohibited by the provisions of the Elkins Act. There was no question before the Court as to the validity of the railroad tariffs or the portions thereof providing for payment of mileage allowances. Nevertheless this question was treated as all important by this Court, to the exclusion of the question that was actually presented. Not only has the Court failed to decide the issues before it, but it has tied the hands of the District Court pending determination by the Interstate Commerce Commission of a new proceeding to be hereafter instituted. This is contrary to the rule announced in the case of *Helis v. Ward,* decided by this Court on December 18, 1939 that "It is well settled that this Court confines itself to the ground upon which the writ was asked or

granted, the review here being no broader than that sought by the petitioner."

The administrative proceeding, which this Court has in mind, is a proceeding before the Interstate Commerce Commission by respondent as the lessee-shipper to secure an allowance for furnishing the tank cars and a provision in the published rules or tariffs covering the payment of such allowance. We believe that in so holding the Court has proceeded on the erroneous understanding that the tariffs in effect during the period covered by this action did not, as contemplated by section 15 (13) of the Interstate Commerce Act, provide for the payment to a shipper of allowances for the furnishing of the tank cars. The record discloses (R. 192-201) that the rules provided for the payment of a definite mileage allowance "to the car owner or to the party who has acquired the car or cars". In April, 1935 this rule was changed to exclude a lessee of tank cars from the class of those entitled to receive the mileage allowance. But that change *was not applicable* to the period for which the mileage allowances sued for in this action either accrued or were paid by the carriers. It is obvious that respondent as the lessee of the tank cars was a party who "acquired the cars" within the language of the rules, and this Court concurs in the decision of the Circuit Court of Appeals that respondent furnished the tank cars although for the convenience of all parties the owners' marks remained on the cars and the car corporation in its lease agreed to collect the mileage as the agent of the lessee.

In its opinion this Court concedes that the leasing of cars to shippers for use in transportation of their commodities over railway lines is not only of long duration but well understood and entirely lawful; also that the Interstate Commerce Commission has so held even to the point of sanctioning the payment by lessor as owner to the lessee as car shipper of a part of the mileage earned by the cars. (*In the Matter of Private Cars,* 50 I. C. C. 652, 680.) That order was issued in 1918 and has never been set aside or even challenged. The present allowance of 1½¢ per mile became effective by tariff rules filed and published in 1926 and the Interstate Commerce Commission has acquiesced therein ever since. Under the Act the carriers were authorized to make allowances that were "just and reasonable" for the furnishing of tank cars or other facilities and the Commission was charged with the duty of suspending or correcting any such allowances either on complaint or on its own initiative. The acquiescence over a period of more than thirteen years in the mileage allowances stated in said published rules constitutes *an approval by the Commission of the practice of shippers furnishing cars leased by them and of the payment by the carriers of the fixed mileage allowance as provided in said rules.* Therefore the only point that is not settled by the action of the Commission is the compensation to be paid by a car lessee to a car owner for the use of the tank cars. The Court's conclusion that this presents a question calling for the exercise of the administrative authority of the Interstate Commerce Commission overlooks the fact that the Com-

mission is only authorized under the Act to determine the amount to be paid by the carriers for the furnishing of the cars and to limit such payment to what is just and reasonable for that service. The rental paid by the car lessee to the car owner for the use of the cars has no necessary relation to what may be reasonably paid by the carrier to the shipper for the use of the cars. The car rental in a particular case may be more or less than the value of the service to the carrier. The question which the Commission is authorized under the Act to determine is what does the service save to the carrier and what is a reasonable compensation therefor—not what does it cost the shipper.

The only contention that is urged either by the car corporation or the Commission is that the rental paid by the respondent for the use of the tank cars under the terms of its lease is less than the mileage paid by the carriers for the furnishing of the cars and therefore might result in a profit to the shipper on its car lease. This is a question of business economics between the car owner and the oil works, neither of which is a carrier. No showing was made nor is it claimed that any other shipper is concerned with or affected by the car rental paid by respondent to the car corporation.

If the reasonableness of the mileage allowances or the propriety of their payment either to car owners or shippers were in question there might be a case for the administrative authority of the Commission, but as before stated, those matters were definitely

settled by the Commission *In the Matter of Private Cars* (50 I. C. C. 652), after an exhaustive investigation. The conclusions there reached were not reversed or affected as to tank cars by the action of the Commission in the proceeding entitled *In Re Privately Owned Refrigerator Cars,* and the Commission expressly so stated. Under the terms of the car lease agreement (R. 20 et seq.) respondent as the lessee undertook to pay a monthly rental per car, regardless of whether the cars stood idle or were used in transportation. The Court does not hold, nor is it contended by the car corporation or the Interstate Commerce Commission, that the car lease agreement was in any respect illegal. The only claim is that the car rental so paid by respondent for the use of the cars is less than the cars will earn when used for transportation purposes according to the rules covering mileage allowances. This Court has held in *Ellis v. Interstate Commerce Commission,* 237 U. S. 434, that the control of the Commission over the use of privately owned facilities must be exercised through its control of the carriers, and that it has no jurisdiction over the dealings between a car owning company and the lessee of the cars even though the lessee is a shipper. The Commission itself has recognized this limitation upon its authority in the matter entitled "Investigation and Suspension Docket No. 4572, decided April 27, 1939". In effect, therefore, the decision of this Court remands the case to the District Court with directions to suspend action thereon until the Interstate Commerce Commission

shall reach a determination in some proceeding, that has not been instituted, challenging in whole or in part the propriety of practices and tariffs that the Commission has knowingly acquiesced in for a period of more than thirteen years. Moreover this proceeding which the District Court is directed to wait upon, would involve the amount of the car rentals to be paid by a lessee shipper to a car owner for the use of tank cars. The Commission has no administrative authority or other jurisdiction or control over this question. This is a wholly different question from that before the Court in the cited case of *Mitchell Coal Co. v. Pennsylvania R. R. Co.*, 230 U. S. 247.

Until the existing tariffs and mileage allowances have been held not "just and reasonable", they are binding upon carriers and shippers alike, and may not be departed from without violation of the provisions of Section 1 (2) of the Elkins Act. If, therefore the Commission should in such proceeding as is suggested in the opinion of this Court, modify or restrict the mileage payments to be made by carriers to lessee-shippers such order could only be effective as to the future. The Commission could not invalidate the lease agreement between the car corporation and respondent, or change the fact that by the terms of that agreement the car corporation was appointed respondent's agent to collect the mileage allowances. The car lease agreement by its terms lapsed as of December 31, 1936, so that it would be unaffected by any future tariffs or rules of the carriers. Whatever, if anything the Com-

mission may do or say as to future mileage allowances for the furnishing of tank cars cannot destroy the fact that under the preexisting rules, which have been sanctioned by acquiescence on the part of the Commission for at least thirteen years, the carriers have paid to the car corporation, as the registered owner of the tank cars in question and agent of the supplier under its contract, the mileage allowances provided to be paid. In so doing they have discharged their obligations under the rules. The utmost that could be asked of the Interstate Commerce Commission in the suggested proceeding is that after investigation it should order the revision and republication of rules by the carriers for a uniform mileage allowance to be paid to lessee-shippers for the use of cars leased by them from car owners. This could not affect the contract sued upon in this case, and the question which is before this Court would still confront the District Court as to whether the car corporation, having received as respondent's agent the mileage allowances from the carriers, should retain them, without any right or title thereto, or pay them over to respondent as provided in the car lease agreement. The suggested proceeding before the Interstate Commerce Commission would have proven futile, and the District Court would have received no guidance from this Court as to how to proceed in the determination of the question involved.

We respectfully submit that the case merits further consideration on the part of this Court, and that the decision of the Circuit Court of Appeals should be af-

firmed, leaving the Interstate Commerce Commission free to take such steps as it might thereafter conclude to be necessary or proper with respect to existing tariffs.

Dated, San Francisco, California,
January 22, 1940.

Respectfully,
W. F. WILLIAMSON,
W. R. WALLACE, JR.,
RICHARD P. NORTON,
WILLIAMSON & WALLACE,
Attorneys for Respondent and Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for respondent and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco, California,
January 22, 1940.

W. F. WILLIAMSON,
Of Counsel for Respondent and Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 129.—October Term, 1939.

General American Tank Car Corporation, Petitioner, *vs.* El Dorado Terminal Company. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 2, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

This was an action in assumpsit brought by the respondent to recover a sum alleged to be due it by the petitioner under the terms of a a car leasing agreement. The answer admitted the execution of the agreement but pleaded that payment of the sum demanded would amount to the making of a rebate, contrary to the provisions of the Elkins Act.[1] The District Court rendered judgment for the petitioner which the Circuit Court of Appeals reversed, holding

[1] Act of February 19, 1903, c. 708, Sec. 1, 32 Stat. 847, as amended.

"(3). *Receiving rebates; additional penalty and recovery thereof.*—Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of sections 41, 42, or 43 of this title, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in said sections, shall in addition to any penalty provided by said sections forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be." U. S. C., Tit. 49, § 41(3).

the respondent entitled to the full amount claimed.[2] We granted certiorari on account of the importance of the question involved and of the allegation that the judgment was not in accord with prior decisions of this court.

The petitioner is a corporation, unaffiliated with any railroad, which owns and leases tank cars to railroads and to shippers for use in transportation in interstate commerce. The respondent is a wholly owned subsidiary of El Dorado Oil Works, a manufacturer of coconut oil operating a plant at Berkeley, California, and brought the action as assignee of the latter's rights under the lease.

September 28, 1933, the petitioner and the Oil Works entered into an agreement whereby the former leased to the latter fifty tank cars designated in the contract as "permanent cars", at a rental of $27.50 per car per month. The petitioner agreed to supply the Oil Works with such additional cars as it might need for the shipment of its products, on a rental basis of $30.00 per car per month, these to be ordered from time to time as needed and returned when no longer required.

The contract provided that the petitioner would collect, and credit to the rental account of the Oil Works each month, all mileage earned by the cars while in the Oil Works' service, "according to and subject to all rules of the tariffs of the railroads." The petitioner was to pay the cost of repairs and maintenance but the Oil Works was to be responsible for damage or destruction of the cars while on privately owned tracks.

The leased cars were used by the Oil Works for shipment of its products. Such use was important to the Oil Works since the railroads serving its plant were not prepared to furnish shippers a full supply of the kind of cars needed for carrying the oils in question. The railroad tariffs, though stating rates on the Oil Works' products when shipped in tank cars, disclaimed any obligation to furnish cars of the requisite type.

The carriers maintain tariffs applicable to the allowances to be made to car owners for the use of tank cars, which provide for payment of one and one-half cents per car mile loaded and empty. The tariffs also embody rules which, during part of the period in controversy, stated that mileage payments would be made only to the party whose reporting marks appeared upon the cars and during part of the period that "mileage for the use of cars of private own-

[2] 104 F. (2d) 903; 104 F. (2d) 916.

ership will be paid for loaded and empty movements only to the car owner—not to a lessee.'' The rules precluded payment of the mileage allowance to the Oil Works under the circumstances of this case, since the lease stipulated that all the leased cars should bear the reporting marks of the petitioner.

The petitioner complied with the provisions of the agreement until July 2, 1934, when the Interstate Commerce Commission rendered its decision in *Use of Privately Owned Refrigerator Cars*, 201 I. C. C. 323, in which it considered the payment of mileage allowances to shippers either directly or through car owners, which payments exceeded the total of the agreed rental for the use of the cars and any additional actual expenses of the shipper in connection with the cars. In that case the Commission held that such payments operated to give the lessee transportation of his products at lower rates than those paid by other shippers who use cars furnished by the carriers and thus amounted to a rebate from the published transportation rates. The petitioner's practice had been to collect the mileage, deduct the rental due, and pay over the balance monthly. After the rendition of the Commission's decision the petitioner collected the mileage from the railroads, credited the Oil Works with the rental due, retained the balance, and refused to pay it over. The ground of its refusal was that to follow the former practice would render it a participant in illegal rebating.

It was disclosed at trial that throughout the period covered by the respondent's claim the mileage allowances had, in every month, exceeded the rentals, leaving a substantial balance which the respondent insisted should be paid to it. During the seven month period from November 1, 1934, to May 31, 1935, this balance amounted to $17,614.13.

The District Court concluded that payment to the shipper of any excess of the mileage allowances over stipulated rents would constitute a rebate prohibited by the Elkins Act and, in that view, held that the respondent could not recover. The Circuit Court of Appeals permitted a recovery on the ground that Sec. 15(13)[3] of the Interstate Commerce Act authorized the payment of mileage allowances by railroads for the use of private cars furnished by shippers for the transportation of their own commodities; that the practice had been approved by the Commission, and maximum

[3] U. S. C. Tit. 49, Sec. 15(13).

rates fixed by it; that the one and one-half cents per car mile allowance appeared in the carriers' published tariffs dealing with the subject and was, and would remain until action by the Commission, the legal rate payable for the use of such cars; that, while it is open to the Commission to inquire, on its own motion or on complaint, as to any abuses in connection with such tariff mileage allowances, until the Commission does act, the carriers are justified in continuing to pay the scheduled rates; that the shipper in this case is the furnisher or supplier of privately owned cars to the carriers, and the lease agreement constitutes the petitioner a mere agent for the collection and payment of the mileage allowances to the shipper; and that, consequently, the payment, by the petitioner to the shipper, of any excess of the mileage earnings is not a rebate within the terms of the Elkins Act.

The petitioner insists that this conclusion is wrong and that of the District Court correct. The Interstate Commerce Commission, as a friend of the court, has filed a brief in which it contends, first, that the District Court was without jurisdiction to entertain the cause, as the question involved is one primarily for administrative action by the Commission and, secondly, that the payment of the excess credits by the petitioner would result in payment of a prohibited rebate to the shipper.

We hold that the District Court had jurisdiction but that, upon disclosure of the terms and operation of the lease contract, it should not have proceeded to adjudicate the rights and liabilities of the parties in the absence of a decision by the Commission with respect to the validity of the practice involved in the light of the provisions of the Interstate Commerce Act.

Freight cars are facilities of transportation, as defined by the Act.[4] The railroads are under obligation, as part of their public service, to furnish these facilities upon reasonable request of a shipper,[5] and therefore have the exclusive right to furnish them. They are not, however, under an obligation to own such cars. They may, if they deem it advisable, lease them so as to be in a position to furnish them according to the demand of the shipping public and, if the carriers do so lease cars, the terms on which they obtain them are not the subject of direct control by the Interstate Commerce Com-

[4] 49 U. S. C. § 1(3).

[5] 49 U. S. C. § 1(10)(11); Pennsylvania R. R. Co. v. Puritan Coal Co., 237 U. S. 121; Pennsylvania R. R. Co. v. Sonman Shaft Coal Co., 242 U. S. 120.

ssion.[6] If the carriers pay too much for the hire of such cars the mmission may, of course, refuse to allow them to reflect such ess cost in their tariffs. The lessor of such cars to a railroad, vever, is not itself a carrier or engaged in any public service. erefore its practices lie without the realm of the Commission's mpetence.

Cars thus leased and used by the carriers are to be distinguished m so-called private cars with which we are here concerned. ppers, particularly those who require a specialized form of ight car for transportation of their products, may, and do, own s adapted for the purpose. They may, and do, in lieu of owning h facilities, rent them from the owners. Car companies owning arge number of a special type of freight car, some affiliates or sidiaries of railroads and others, like the petitioner, wholly in- endent and financed by private capital, have, for many years, n in the business of leasing cars to shippers. The practice has n well known and well understood. It is entirely lawful and the nmission has so held.[7] But the practice cannot modify the re- rements of paragraph (13) of Sec. 15,[8] which governs the pay- nt of allowances for private cars, and invests the Commission h authority to find and declare what allowances are reasonable. s the Circuit Court of Appeals has pointed out, different pers may have differing costs in respect of privately owned furnished the carriers. Nevertheless, as the allowances to nade them by the carriers for the use of such cars must be subject of published schedules,[9] and must be just and reason- ,[10] the Commission is compelled to ascertain in the light of past present experience a fair and reasonable compensation to cover costs and prescribe a uniform rate which will reflect such

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llis *v.* Interstate Commerce Commission, 237 U. S. 434.

n the Matter of Private Cars, 50 I. C. C. 652.

llowance for service or facilities furnished by shipper.—If the owner of rty transported under this chapter directly or indirectly renders any e connected with such transportation, or furnishes any instrumentality therein, the charge and allowance therefor shall be no more than is just easonable, and the commission may, after hearing on a complaint or on n initiative, determine what is a reasonable charge as the maximum to id by the carrier or carriers for the services so rendered or for the use instrumentality so furnished, and fix the same by appropriate order, order shall have the same force and effect and be enforced in like manner orders above provided for under this section. 49 U. S. C. § 15(13).

U. S. C. § 6(1)(7)

) U. S. C. § 15(13), *supra*, note 9.

experience. It is inevitable that some shippers may be able to furnish facilities at less than the published allowance while others may find their costs in excess of it. This fact, however, does not militate against the fixing of a uniform rate applicable to shippers properly classified by the Commission.[11]

From what has been said it results that the shipper in this case was permitted by law to furnish freight cars for the transportation of its products and to be paid a reasonable allowance for performing this portion of the public service which the carrier was bound to render, and that the law requires that the amount and conditions of payment of such allowance shall be set forth in a published tariff. If this is not done, the shipper may complain to the Commission, to the end that a proper allowance be ascertained and made effective by a schedule duly published. In the present case this has not been done. Nor has the shipper ever applied to the Commission for its decision as to what was a proper allowance for the cars furnished by it.

As we have stated, the mileage tariffs published by the American Railway Association, which govern the instant case, require that private cars be marked with so-called reporting marks or initials together with a car number. These marks are for the purpose of keeping records of the car's movements and mileage. Appropriate marks to designate privately owned cars are assigned by the Railway Association to their owners. The rules appearing in the tariff during a portion of the period in question provided that the mileage for the use of cars of private ownership would be paid to the car owner or to the party who had acquired the car or cars as shown by the permanent reporting marks. The lease agreement provided that the cars should bear the reporting marks of the petitioner. Thus the carrier was bound by its rules to pay the allowance to the petitioner. During a portion of the term in controversy the rules provided that mileage could be paid only to the car owner, not to a lessee. Here again the rules precluded the payment of the allowance by the carrier to the shipper.

The Circuit Court of Appeals has held, and we think correctly, that the shipper—the Oil Works—furnished the cars to the carrier in the present instance. The petitioner did not. The shipper

[11] Compare Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 45.

s then entitled, under the plain terms of Sec. 15(13), to be paid the carrier a just and reasonable allowance for providing the cility. It seems clear that no rule or regulation of the carrier ay provide for the payment of such allowance to any other per-n. And we think the consideration that, in this case, the peti-ner acted merely as collecting agent for the shipper, does not take e case out of the Commission's jurisdiction. If it should appear at, with respect to the tank cars in question, the shipper-lessee is aking substantial profits on leased cars, by reason of the excess the mileage allowances over the rentals paid, it might in the light all the facts be found that the shipper is, in the result, obtaining nsportation at a lower cost than others who use cars assigned em by the carriers or own their own cars. The Commission has und that, in the case of refrigerator cars, held under similar leases, is has been the case.[12] The inquiry into the lawfulness of the actice is one peculiarly within the competence of the Commis-n.[13]

As the tariffs now contain no provision for the payment of car leage allowances by the railroad to the shipper directly, and as, on the face of things as disclosed by this record, the shipper is ap-rently reaping a substantial profit from the use of the cars, a clear se is made for the exercise of the administrative judgment of the mmission. The Circuit Court of Appeals, without supporting idence in the record as to any specific items, said that there are viously other expenses which the shipper must bear over and ve the actual rental paid. If this were so, the reflection of those penses, as well as the rental itself, in the allowance paid by the rier to the shipper for the use of the latter's cars, would be a tter for the administrative judgment of the Commission and not determination by a court.[14]

We have said that the Commission insists the District Court was hout jurisdiction of the cause. With this we do not agree. The ion was an ordinary one in assumpsit on a written contract. The rt had jurisdiction of the subject matter and of the parties. t it appeared here, as it did in *Mitchell Coal Co.* v. *Penna. R. R.* , 230 U. S. 247, that the question of the reasonableness and

Use of Privately Owned Refrigerator Cars, 201 I. C. C. 323.
Great Northern Ry. Co. v. Merchants Elevator Co., 259 U. S. 285, 290, 291.
Mitchell Coal Co. v. Penna. R. R., 230 U. S. 247; Morrisdale Coal Co. v. nna. R. R. Co., 230 U. S. 304.

legality of the practices of the parties was subjected by the Interstate Commerce Act to the administrative authority of the Interstate Commerce Commission. The policy of the Act is that reasonable allowances and practices, which shall not offend against the prohibitions of the Elkins Act, are to be fixed and settled after full investigation by the Commission, and that there is remitted to the courts only the function of enforcing claims arising out of the failure to comply with the Commission's lawful orders.

When it appeared in the course of the litigation that an administrative problem, committed to the Commission, was involved, the court should have stayed its hand pending the Commission's determination of the lawfulness and reasonableness of the practices under the terms of the Act. There should not be a dismissal, but, as in *Mitchell Coal Co.* v. *Penna. R. R. Co.*, *supra*, the cause should be held pending the conclusion of an appropriate administrative proceeding. Thus any defenses the petitioner may have will be saved to it.[15]

The judgment of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court for further proceedings in conformity to this opinion.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[15] Compare Morrisdale Coal Co. v. Pennsylvania R. R. Co., 230 U. S. 304, 314, where no rights could be saved by retaining the cause; and St. Louis &c. Ry. v. Brownsville Dist., 304 U. S. 295, 301, where the District Court was asked to make an order which the Commission alone had authority to make.